

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
New Part 4 of the Commission's Rules)	ET Docket No. 04-35
Concerning Disruptions to Communications)	
)	

To: The Commission

**REPLY COMMENTS OF
DOBSON COMMUNICATIONS CORPORATION**

Dobson Communications Corporation ("Dobson") hereby submits its reply to comments filed in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.¹ Dobson is a leading provider of wireless telecommunications services to non-urban markets throughout the United States,² operating wireless networks in sixteen states with almost 1.5 million customers in a managed population base of 10.6 million. Dobson is pleased to share its views on the Commission's proposal to require the filing of system outage reports.

Mandatory outage reporting is unnecessary and unjustified. If the Commission decides to mandate outage reports, then it should be limited to the larger, national carriers and should not apply to those mid-sized and smaller carriers whose primary focus is wireless deployment in rural areas. These carriers must be able to devote limited resources towards service deployment rather than implementing another unfunded mandate of procedures for filing reports. Given the Commission's oft stated goal of facilitating the development of communications services to rural

¹ *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Notice of Proposed Rule Making*, FCC 04-30 (rel. Feb. 23, 2004) ("NPRM").

² Approximately 85 percent of Dobson's wireless network coverage is in markets that would be classified as "rural."

America, it is particularly important that the agency avoid unduly burdening those who are seeking to do so.

Finally, Dobson agrees with commenters, including the Department of Homeland Security (“DHS”), that oppose the public dissemination of outage data because this information is confidential to carriers and disclosure will impair homeland security efforts.

I. Mandatory Outage Reporting is Unnecessary and Unjustified.

Dobson agrees with the many commenters who oppose the imposition of mandatory outage reporting requirements.³ As noted by those commenters, such a regulatory requirement is both unnecessary and unjustified in the highly competitive CMRS industry.

Year after year, the Commission has engaged in a careful analysis of the CMRS industry and concluded that effective competition exists in the CMRS marketplace; the agency has repeatedly expressed a “general preference that the CMRS industry be governed by the competitive forces of the marketplace, rather than by governmental regulation.”⁴ These competitive forces provide carriers with ample incentives to engineer their networks generally to avoid, and then to mitigate, service disruptions, in order to be able to market and ensure the availability of reliable communications services for their subscribers. Nonetheless, the Commission proposes here to adopt another unfunded regulatory requirement that necessarily diverts capital resources from improved facilities to reporting implementation. As many

³ See Cingular Wireless LLC (“Cingular”) Comments at 4-7; CTIA – The Wireless Association (“CTIA”) Comments at 6-8; Nextel Communications, Inc. (“Nextel”) Comments at 2-5; Sprint Corporation (“Sprint”) Comments at 2-6; T-Mobile Comments at 4-7.

⁴ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 02-379, Eighth Report, 18 FCC Rcd 14783 (2003) (“*Eighth Report*”); *Southwestern Bell Mobile Systems, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 19898 at ¶ 9 (1999) (quoting petitioner).

commenters have already noted, the benefit to be gained in this instance from mandatory reporting is particularly tenuous, and simply does not justify increasing carrier costs.

As the Commission pointed out in its most recent competition report, 95% of the U.S. population has a choice of 3 or more CMRS carriers from which they can obtain service, and 83% of the population has five or more CMRS service providers available. This high level of competition provides carriers with ample incentives to ensure that their networks are secure and reliable -- if a carrier's service disruptions are not limited in number and duration, disgruntled subscribers have ample choices from which to obtain a more reliable service. Dobson has focused its efforts to provide advanced, high quality, reliable service to consumers as a selling point, as have most of its competitors, and mandatory reporting simply does not change this competitive equation. On the other hand, any reporting obligations that the agency might impose would require carriers to devote resources away from efforts to identify and resolve service disruptions with no obvious public benefit.⁵

It must also be noted that a single carrier's service disruption rarely denies consumers service in a market. All carriers have automatic roaming arrangements in place with other service providers, and typically those arrangements allow for "home-market" roaming when service is not otherwise available from the subscriber's carrier. These roaming arrangements, combined with the overlapping coverage of several providers in any given area ensure that most consumers will have access to an alternative network to complete communications in the event

⁵ Dobson agrees with Cingular and Sprint that the Commission has an obligation to undertake a formal cost/benefit analysis before even considering mandating outage reports; we believe such an analysis would show a significant imbalance between the high costs of such a program and the relatively low benefits to be achieved. *See* Cingular Comments at 14; Sprint Comments at 2.

of a service disruption. In the worst case, as Sprint notes, the mobile nature of the service also allows subscribers to move to another area to overcome a temporary system degradation.⁶

As the Commission has recognized, consumers are increasingly dependent on mobile services and wireless services are now an important part of the Nation's critical communications infrastructure; this is a great achievement for the CMRS industry, barely twenty years after the first cellular licenses were awarded. The increasing penetration rates and customer reliance are a credit to the competitive nature of the CMRS industry. There is simply no need to impose additional regulations on the industry to ensure the reliability of wireless systems.

Those few commenters that favor the expansion of wireline reporting obligations to the wireless industry fail to account for the level of competition in the CMRS industry that provides incentives that are lacking in the much less competitive wireline arena. The Connecticut Department of Public Utility Control ("CTDPUC") favors mandatory reporting because all communications systems should be subject to the same requirements as the wireline industry "so that there is a balance between the public interest and fostering competition."⁷ The City of New York *et al.* also comments that publicly available reports "will give providers an additional economic incentive to make the investments required to improve the reliability of their networks."⁸ While the wireline industry may lack sufficient competition and need incentives to identify and correct disruptions, the same rationale simply does not hold true in a competitive CMRS marketplace where subscribers can "walk with their feet."⁹

⁶ See Sprint Comments at 4.

⁷ CTDPUC Comments at 3.

⁸ City of New York *et al.* Comments at 10.

⁹ T-Mobile Comments at 8.

Nor can the Commission justify mandatory reporting simply to “enable the development and refinement of best practices for [CMRS] providers and encourage a more effective public/private partnership” for the voluntary adoption of best practices;¹⁰ the development and adoption of best practices will occur without mandatory reports. According to Cingular, CTIA and Sprint, most of the voluntary best practices for the wireline industry that are being touted for the benefits of mandatory reporting were developed pursuant to voluntary collaborations.¹¹ And “[o]ver 500 of the Best Practices were developed . . . , when wireless was a participant and was reporting outages voluntarily.”¹²

Commenters also highlight that efforts are underway in the new Industry-Led Outage Reporting Initiative (“ILORI”), which has the participation of all the national carriers, to reform the voluntary reporting regime.¹³ The ILORI efforts will provide the Commission with the data necessary for the development of best practices for the industry. As T-Mobile has appropriately noted, the Commission should at least give ILORI a meaningful opportunity to identify and correct problems with voluntary reporting before even considering mandatory requirements.¹⁴ Even the DHS, in whose name these requirements are proposed, is not opposed to giving voluntary reporting another chance.¹⁵

If despite the objection of Dobson and the other CMRS carriers, the Commission nonetheless decides to require outage reports for the development of a record for a “best practices” guide, then there is no basis for applying such a requirement “across the board.” A

¹⁰ *NPRM* at ¶ 14.

¹¹ See CTIA Comments at 8; Cingular Comments at 4-5; Sprint Comments at 3.

¹² CTIA Comments at 8.

¹³ See Cingular Comments at 5, CTIA Comments at 6-7.

¹⁴ See T-Mobile Comments at 4.

¹⁵ See DHS Comments at 9-10.

record can be developed from the national carriers without imposing the burden on smaller carriers, particularly those carriers serving rural service areas. Compliance with unfunded mandates necessarily diverts capital from these smaller carriers that is required for improving and upgrading facilities to remain competitive with the offerings of national carriers. And the economics of service in rural areas are particularly harsh for such unfunded mandates. Rural carriers must amortize federally mandated costs over a much smaller customer base, while generally achieving comparable average revenues per subscriber to those achieved by the nationwide carriers. With the active participation of the national carriers in the reporting process, there is little need to have non-national carriers file reports for the development of best practices for the industry.¹⁶

Finally, if the Commission establishes reporting standards and effectively “occupies the field” of outage reporting, Dobson also agrees with Sprint that these standards should be exclusive, and federally pre-empt other governmental entities, especially local and state entities, from imposing their own reporting obligations.¹⁷ The costs of compliance with such a requirement would be difficult to accept at the Federal level; these costs would be compounded beyond any reasonable level if carriers have to establish different procedures for every jurisdiction in which they provide service. If local and state governments want outage reporting or network reliability information, then they should obtain it from the Federal government.¹⁸

¹⁶ See BloostonLaw Rural Carriers (“Rural Coalition”) Comments at 1. While the Rural Coalition only suggests exempting Tier III wireless carriers from mandatory reporting, Dobson proposes that the exemption include all non-national carriers that serve rural areas, *i.e.*, Tier II and III carriers.

¹⁷ See Sprint Comments at 1, 6.

¹⁸ The DHS also notes that the sharing of information with state public utilities commissions by the Federal government would reduce the need for state regulators to collect such data independently. See DHS Comments at 8.

II. Outage Reporting Data Should Not Be Made Publicly Available.

Regardless of whether outage reports are voluntary or mandatory, the Commission should assure that this information will not be made publicly available. Not only is this information highly confidential to CMRS carriers, and important to protect from competitors, but, as many commenters have noted, public disclosure could adversely affect homeland security as well, providing a roadmap for ill doers. In particular, the DHS urges the Commission not to publicly disclose such information stating that “Congress has recognized, certain information that pertains to or affects our ability to protect the Homeland requires special safeguarding. Outage reporting (particularly that requested by the Commission in the proposed template) constitutes such information.”¹⁹ Safeguarding such information is also in line with congressional and presidential directives and the efforts of other Federal agencies to keep this type of information from public review.²⁰ Dobson agrees with the many commenters who have noted that by retaining a voluntary, instead of a mandatory, reporting regime the Commission can ensure that outage information is exempt from public disclosure under the Freedom of Information Act.²¹

¹⁹ *Id.* at 14 (citation omitted).

²⁰ See Cingular Comments at 9-10; CTIA Comments at 5, 8-11; Nextel Comments at 4-5; T-Mobile Comments at 3-4, 10-13.

²¹ See Cingular Comments at 10-11; Nextel Comments at 5; T-Mobile Comments at 15-16. The DHS does note that “if the vulnerability information in question were the Federal government’s rather than the private sector’s (that is, if it were ‘owned by, produced by or for, or [was] under the control of the United States Government’), it would be eligible for protection as classified national security information.” DHS Comments at 15 n.35 (citation omitted).

CONCLUSION

For the reasons stated above, Dobson opposes the imposition of mandatory outage reporting requirements.

Respectfully submitted,

DOBSON COMMUNICATIONS CORPORATION

By: /s/ Ronald L. Ripley
Ronald L. Ripley, Esq.
Vice President & Senior Corporate Counsel
Dobson Communications Corporation
14201 Wireless Way
Oklahoma City, OK 73134
(405) 529-8500

June 24, 2004